IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Crl.Rev.Pet.No. 2641 of 2007()

CRA.276/2005 of SESSIONS COURT, KOZHIKOE
SC.576/2003 of II ADDL.ASSISTANT SESSIONS COURT, KOZHIKODE

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

C.V.HABEEB, S/O.MOHAMMED,
AGED 27 YEARS THOTTAKUNNI PARAMBA,
NALLALAM AMSAM DESAM, KOZHIKODE TALUK.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA
SMT.P.RANI DIOTHIMA

RESPONDENTS: RESPONDENTS/COMPLAINANT

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2641 OF 2007

Dated this the 10th day of July, 2007

O R D E R

The revision petitioner, who was the accused in S.C.No.576/2003 on the file of the Additional Sessions Court, Kozhikode for an offence punishable under section 332 IPC, challenges the conviction entered and the sentence passed by the lower appellate court for an offence punishable under section 324 IPC. In modification of the sentence of rigorous imprisonment for three years and a fine of Rs.5,000/-(Rupees five thousand only) imposed by the trial court, the lower appellate court has imposed a sentence of simple imprisonment for one year and to pay a fine of Rs.5,000/-(Rupees five thousand only) and on default to pay the fine to suffer simple imprisonment for two months. There was a further direction to pay a sum of Rs.4,000/-(Rupees four thousand only) from out of the fine amount to PW1, the injured, by way of compensation. It is the said conviction and sentence which are assailed in this revision petition.

2. Eventhough Sri.P.S.Sreedharan Pillai, the learned counsel appearing for the revision petitioner, assailed the

conviction recorded by the court below on the ground that the evidence on record does not justify the same, I cannot agree with the same. It was after evaluating the oral and documentary evidence in the case that both the courts recorded the respective conviction and this court, sitting in the rarefied jurisdiction under section 397 read with section 401 Cr.P.C., will be loathe to re-appreciate the evidence and come to a different conclusion. The conviction recorded by the lower appellate court, therefore, does not warrant any interference and the same is confirmed.

3. What now survives for consideration is the question of legality and extent of the sentence imposed on the revision petitioner. Having regard to the facts and circumstances of the case and the nature of injuries sustained by PW1 and the circumstances under which PW1 happened to sustain the injuries and the further fact that the petitioner is a street hawker, I am of the view that penal servitude by way of incarceration is not warranted and the ends of justice will be adequately met by directing the revision petitioner to suffer imprisonment till the rising of the court and to pay a fine of Rs.7,500/-(Rupees seven thousand five hundred only) with a direction for adequate

compensation. Accordingly, in modification of the sentence imposed on the revision petitioner, he is sentenced to imprisonment till the rising of the court and to pay a fine of Rs.7,500/-(Rupees seven thousand five hundred only). The fine amount shall be paid within two months from today, failing which he shall undergo simple imprisonment for three months by way of default sentence. A sum of Rs.5,000/-(Rupees five thousand only) from out of the fine amount shall be paid to PW1 by way of compensation under section 357(1) Cr.P.C. as and when the fine amount is realised.

This revision petition is disposed of confirming the conviction but altering the sentence as above.

(V. RAMKUMAR, JUDGE)

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